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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/165,772	10/02/1998	JOHN EDWARD COOK	051481-5047-01	8315
9629	7590	09/08/2004	EXAMINER	
MORGAN LEWIS & BOCKIUS LLP			MILLER, ROSE MARY	
1111 PENNSYLVANIA AVENUE NW			ART UNIT	
WASHINGTON, DC 20004			PAPER NUMBER	
			2856	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/165,772

Applicant(s)

COOK ET AL

Examiner

Rose M Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 17-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 17-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION*****Drawings***

1. The drawings are objected to because empty diagram boxes are impermissible under 37 CFR §1.83(a) which recites as follows:

*"The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a **labeled** representation (e.g., a **labeled** rectangular box)." (Emphasis added by Examiner)*

The empty diagram boxes 114, 115, 117, and 122, found in Figure 1 of the drawings, must be labeled with an appropriate descriptive phrase in addition to the reference legend already present. Appropriate correction is required.

Replacement drawing sheets including the correction are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the internal combustion engine found in claims 18-24 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of

the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-3 and 17-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed specification fails to provide support for “supplying from the tank fuel being combusted by the automotive vehicle” (as found in claims 1 and 17), “combusting in the internal combustion engine fuel from the tank” (as found in claim 18), or “supplying fuel from the tank to the engine” (as found in claim 23).

Applicant relies on lines 8-12 of the originally filed specification for support for the above phrases. However, these lines read verbatim “Gas tank 110, as depicted in Figure 1, is coupled in fluid communication to charcoal canister 114 and to the normally closed canister purge valve 115. The charcoal canister 114 is in communication via the normally open canister vent solenoid valve 116 to filter 117. The normally closed canister purge valve 115 is coupled to manifold (intake) 118.” There is no mention of an “engine” or “supplying fuel” to an automotive vehicle such that the above phrases in the claims would have the proper support needed. And there clearly is no indication of supplying fuel while the leak testing is being performed as is now claimed.

Furthermore, Applicant states at page 1 lines 25-31 that three conditions are required in order to perform the leak testing. These conditions are a) Uniform pressure throughout the system being leak-checked; b) No fuel movement in the gas tank (which

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may results in pressure fluctuations); and c) No change in volume resulting from flexure of the gas tank or other factors. Applicants new step of "supplying fuel" violates both conditions b) and c) recited above as it results in both movement of fuel in the gas tank (possible sloshing as the fuel is removed) and a change in the volume of liquid in the gas tank which can result in a change in volume of the tank itself if a vacuum is produced as the fuel is removed.

Therefore, Applicant's originally filed specification fails to provide support for the invention as now claimed.

### ***Double Patenting***

5. Applicant is cautioned to consider US Patent 6,089,081 when revising the present application. While Applicant's present claims do not require a Double Patenting rejection due to the step of supplying fuel, the removal of this step would open the present claims to both a Statutory Double Patenting and a Non-statutory Obvious-type Double Patenting rejection in view of the claims of the above Patent. While the language of the claims differs, the subject matter of some of the claims overlaps while the scope of a few of the claims can be considered to cover the same subject matter of those all ready patented (see specifically claim 2 of the Patent 6,089,081). Therefore, Applicant is advised to carefully consider the claims of US Patent 6,089,081 when revising the presently claimed invention in order to avoid such rejections.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Cook et al. (US 6,089,081)** discloses an automotive evaporative leak detection system and method.

**Cook et al. (US 6,343,505 B1)** discloses an automotive evaporative leak detection system.

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**Cook et al. (US 6,672,138 B2)** is a Divisional Application of the present application and discloses temperature correction method and subsystem for automotive evaporative leak detection systems.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rose M Miller whose telephone number is 571-272-2199. The examiner can normally be reached on Monday - Thursday, 7:00 am to 5:30 pm.

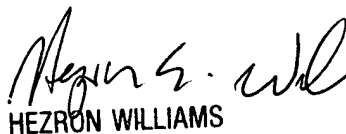
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RMM

1 September 2004



HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800